IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL.

Court No.3

Criminal Revision No. 52/2003

Nand ram ….Revisionist.

Vs.

State of Uttaranchal and another …Respondents.

Hon'ble Irshad Hussain, J.

Heard Sri Nandan Arya learned counsel for the revisionist, Sri D.S.Rawal learned counsel for the respondent No.2 and Sri R.S.Sambhal learned A.G.A. for the State.

2- This is a revision under sections 297/401 of the Code of Criminal Procedure against the impugned judgment dated 10-3-2003 whereby the revision preferred by the respondent No.2-accused against the order of framing of charge by the C.J.M. was allowed and the order dated 9-10-2002 passed by the C.J.M. framing the charge under section 420 I.P.C. against the respondent No.2 was quashed.

3- The relevant facts are that according to the complainant-revisionist his land registered in class-4 bearing No. 83 of village Saud, District Nainital had been donated to "Tusser Resham Utpadan, Sahkari Samiti" village Sigadi Patti Saud District, Nainital by the accused-respondent No.2 without any authority and he had therefore been cheated. The F.I.R. was filed alleging offence under section 420 I.P.C. and after the charge sheet was submitted the learned C.J.M. on hearing the parties decided to frame charge under section 420 I.P.C. against the respondent No.2 by his order dated 9-10-2002. Aggrieved by the same the respondent No.2/accused had preferred a revision before the Sessions Judge which had been decided in his favour by the impugned judgment.

4- The learned Sessions Judge has taken a view that the ingredients of the offence of cheating as defined under section 415 of the Indian Penal Code were not prima facie made out from the allegations made against the accused. The learned counsel for the revisionist argued that the view so taken, is illegal because the accused had transferred the land of other, without consideration, in favour of a samiti. I am not impressed by the argument because there was

absolutely no element of cheating bcause as per the allegations itself the land was transferred without authority. The matter pertain to some civil dispute and if the transfer was illegal the deed of gift may be challenged in proper proceedings before the competent court. At any rate no case of cheating from the allegations was made out and, therefore, there was no occasion for the C.J.M. to frame the charge under section 420 I.P.C. against the acused-respodnent No.2. In having the same quashed the learned Sessions Judge has not committed any illegality and his impugned judgment is just and proper in the circumstances and facts of the case.

5- In view of above there is no merit in this revision and the same is dismissed. The stay order 22-4-2003 is vacated.

(Irshad Hussain, J.)

Dated: 14-11-2003

ISB